



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

Carlos D. Kugler, M.D.

**Respondent Name**

American Zurich Insurance Company

**MFDR Tracking Number**

M4-17-0985-01

**Carrier's Austin Representative**

Box Number 19

**MFDR Date Received**

December 7, 2016

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "POST DESIGNATED DOCTOR EXAMINATION WORK COMP 'SPECIFIC SERVICE' NO PAYMENT RECEIVED TO DATE"

**Amount in Dispute:** \$865.00

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "Please see the EOB(s) and the reduction rationale(s) stated therein. In brief, the requestor was not an authorized provider.

The claimant has treated with Dr. Conception Martinez at Concentra. Dr. Francisco Garcia, M.D. was a referral and not a treating doctor. The requesting provider was not a referral from the treating doctor, but from a non-treating provider.

The claimant got to a Genesis doctor through a referral from the orthopedic surgeon, who is not the treating doctor. As such, it is not a valid alternative certification and the carrier is not liable for the bill. See Rule 130.1 (a)(1)(A)(i) & (2)."

**Response Submitted by:** Flahive, Ogden and Latson

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
April 7, 2016	Examination to Determine Maximum Medical Improvement and Return to Work Work Status Report	\$865.00	\$0.00

### FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

## **Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §129.5 sets out the procedures for Work Status Reports.
3. 28 Texas Administrative Code §130.1 provides the requirements for an examination to determine maximum medical improvement and impairment rating.
4. 28 Texas Administrative Code §134.204 sets out the fee guidelines for division-specific services with dates of service from March 1, 2008 until September 1, 2016.
5. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - 38 – This procedure is normally part of automated test panel seventeen through eighteen (ATP 18/80018) and is reimbursed under the appropriate panel code.
  - W3 – Additional payment made on appeal/reconsideration.
  - 947 – Upheld no additional allowance has been recommended.
  - P12 – Workers’ compensation jurisdictional fee schedule adjustment.
  - 38 – Services not provided or authorized by designated (network/primary care) providers.

## **Issues**

1. What are the services in dispute?
2. Is Carlos D. Kugler, M.D. eligible for reimbursement of disputed procedure code 99456-NM?
3. Is Dr. Kugler eligible for reimbursement of disputed procedure code 99456-RE?
4. Is Dr. Kugler eligible for reimbursement of disputed procedure code 99080-73?

## **Findings**

1. Carlos D. Kugler, M.D. is seeking reimbursement for an examination requested by Francisco Garcia, M.D. to determine maximum medical improvement and the ability of the injured employee to return to work. These services were billed with procedure codes 99456-NM, 99456-RE, and 99080-73. These are the services considered in this dispute.
2. American Zurich Insurance Company (Zurich) denied procedure code 99456-NM, in part, with claims adjustment reason code 38 – “SERVICES NOT PROVIDED OR AUTHORIZED BY DESIGNATED (NETWORK/PRIMARY CARE) PROVIDERS.” 28 Texas Administrative Code §134.204(j)(2) states:

An HCP shall only bill and be reimbursed for an MMI/IR examination if the doctor performing the evaluation (i.e., the examining doctor) is an authorized doctor in accordance with the Act and Division rules in Chapter 130 of this title.

28 Texas Administrative Code §130.1(a) states, in relevant part:

- (1) Only an authorized doctor may certify maximum medical improvement (MMI), determine whether there is permanent impairment, and assign an impairment rating if there is permanent impairment.
  - (A) Doctors serving in the following roles may be authorized as provided in subsection (a)(1)(B) of this section.
    - (i) the treating doctor (or a doctor to whom the treating doctor has referred the injured employee for evaluation of MMI and/or permanent whole body impairment in the place of the treating doctor, in which case the treating doctor is not authorized);
    - (ii) a designated doctor; or
    - (iii) a required medical examination (RME) doctor selected by the insurance carrier and approved by the division to evaluate MMI and/or permanent whole body impairment after a designated doctor has performed such an evaluation...
- (2) Doctors who are not authorized shall not make findings of permanent impairment, certify MMI, or assign impairment ratings and shall not be reimbursed for the examination, certification, or report if one does so. A certification of MMI, finding of permanent impairment, and/or impairment rating assigned by an unauthorized doctor are invalid...

Therefore, Dr. Kugler was required to demonstrate that he met one of the requirements found in 28 Texas Administrative Code §130.1(a)(1)(A) to be eligible for reimbursement of the service in question. Review of

available information finds that the treating doctor for the injured employee is Dr. Concepcion Martinez, not Dr. Francisco Garcia. Submitted billing and documentation support that this service was a referral from Dr. Francisco Garcia. The Division concludes that Dr. Kugler was not an authorized doctor to certify maximum medical improvement and is not eligible for reimbursement.

3. Zurich denied procedure code 99456-RE, in part, with claims adjustment reason code P12 – “WORKERS’ COMPENSATION JURISDICTIONAL FEE SCHEDULE ADJUSTMENT.” 28 Texas Administrative Code §134.204(k) states, in relevant part:

The following shall apply to Return to Work (RTW) and/or Evaluation of Medical Care (EMC) Examinations. When conducting a Division or insurance carrier requested RTW/EMC examination, the examining doctor shall bill and be reimbursed using CPT Code 99456 with modifier "RE." In either instance of whether MMI/IR is performed or not, the reimbursement shall be \$500 in accordance with subsection (i) of this section and shall include Division-required reports...

Review of the submitted documentation does not support that this examination was requested by the Division or the insurance carrier. For this reason, Dr. Kugler is not eligible to bill the procedure code in question. No reimbursement is recommended for this service.

4. Zurich denied procedure code 99080-73, in part, with claims adjustment reason code P12 – “WORKERS’ COMPENSATION JURISDICTIONAL FEE SCHEDULE ADJUSTMENT.” 28 Texas Administrative Code §134.204(l) states:

The following shall apply to Work Status Reports. When billing for a Work Status Report that is not conducted as a part of the examinations outlined in subsections (i) and (j) of this section, refer to §129.5 of this title (relating to Work Status Reports).

The Division concludes that because the Work Status Report was provided in accordance with 28 Texas Administrative Codes §§134.204(i) and (j), Dr. Kugler is not eligible for reimbursement of this service.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has not established that additional reimbursement is due. As a result, the amount ordered is \$0.00.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

### **Authorized Signature**

_____ Signature	Laurie Garnes _____ Medical Fee Dispute Resolution Officer	February 14, 2017 _____ Date
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### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**